IN THE

Supreme Court of the United States

OCTOBER TERM, 1925

No. [redacted]57 30

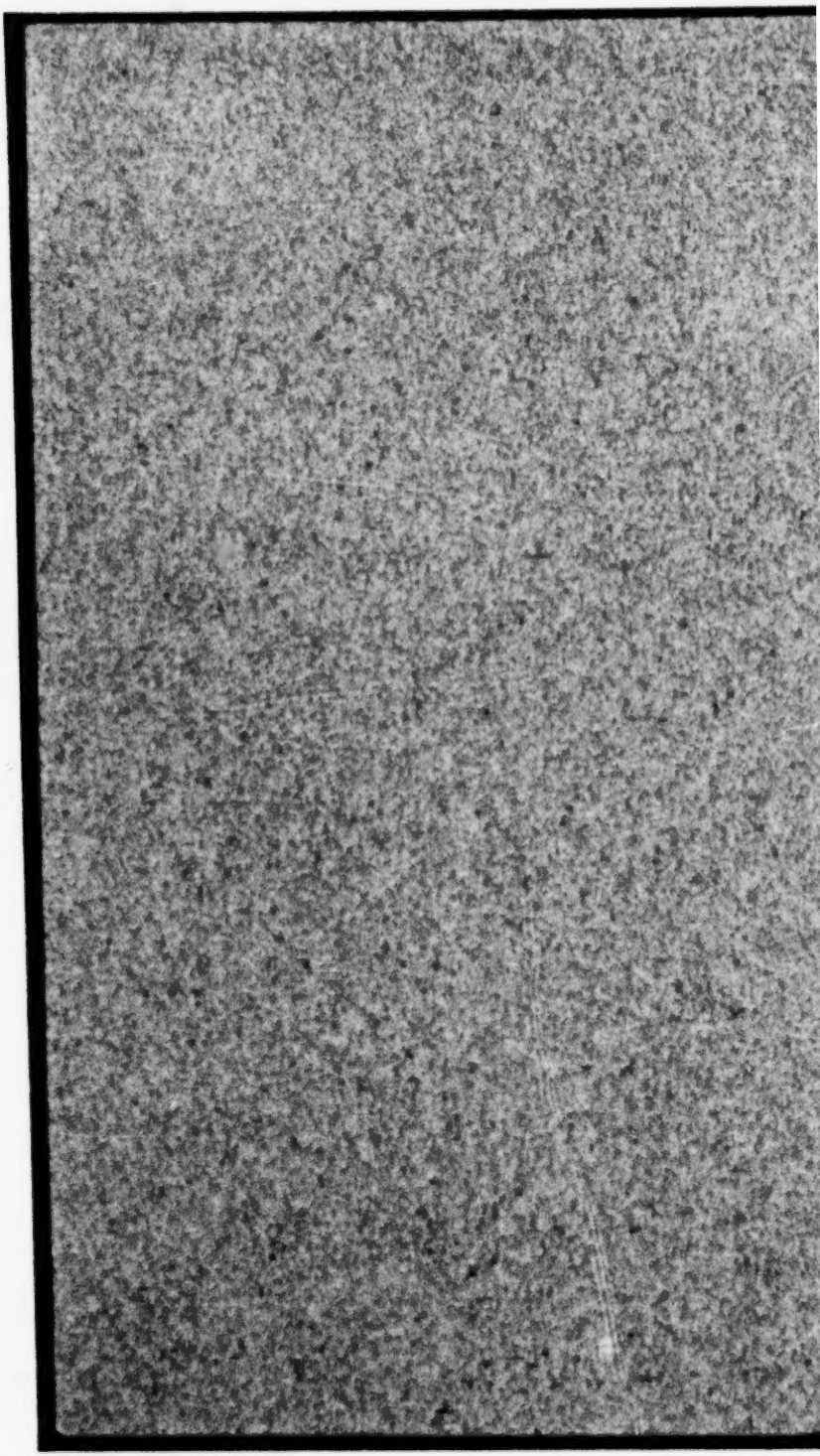
UNITED STATES *ex Relatione*
SKINNER AND EDDY CORPORATION, A Corporation
Petitioner

vs.

J. R. McCARL, COMPTROLLER GENERAL
OF THE UNITED STATES
Respondent

Petition for Writ of Certiorari to the Court of Appeals
of the District of Columbia and Brief
in Support Thereof

LOUIS TITUS,
J. BARRETT CARTER,
Attorneys for Petitioner



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UNITED STATES *Ex Relatione* SKINNER AND EDDY CORPORATION, A CORPORATION,
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vs.

J. R. McCARL, COMPTROLLER GENERAL OF THE UNITED STATES,
Respondent.

NOTICE OF FILING

To The Solicitor General of the United States:

Please take notice that on the ———— day of December, 1925, we caused to be filed in the Clerk's Office of the Supreme Court of the United States a petition for a writ of certiorari in the above entitled cause, and we hand you herewith a copy of said petition with the brief accompanying the same, and of the record in

the case, including the proceedings in the Court of Appeals of the District of Columbia.

Dated December ———, 1925.

Attorneys for Petitioner

Service of the foregoing notice, together with copy of the petition and brief in support thereof and the record filed in the Clerk's Office of the Supreme Court of the United States, is hereby admitted, this ——— day of December, 1925.

Solicitor General of the United States.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1925

UNITED STATES *Ex Relatione* SKINNER AND EDDY CORPORATION, A CORPORATION,
Petitioner,

VS.

J. R. MCCARL, COMPTROLLER GENERAL OF THE UNITED STATES,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

PETITION

To the Honorable, the Supreme Court of the United States:

The petition of the United States *ex relatione* Skinner and Eddy Corporation, a corporation, respectfully shows:

Your petitioner prays for a writ of certiorari to review a final judgment of the Court of Appeals of the District of Columbia rendered in this case on November 2, 1925, and a rehearing denied November 21, 1925, affirming a judgment of the Supreme Court of the District of Columbia dismissing a petition of relator (who is hereinafter called the petitioner) for a writ of mandamus directed to the respondent ordering respondent to consider and pass upon a claim which had been presented to him by petitioner.

PROCEEDINGS IN THE COURTS BELOW

A petition was filed in the Supreme Court of the District of Columbia by petitioner for a writ of mandamus ordering respondent to consider and pass on a claim petitioner had filed with him (R. 1). An answer to this petition was filed by respondent (R. 11). Petitioner demurred to this answer and the demurrer was overruled (R. 17, 18). Thereupon petitioner filed a traverse and plea to the answer (R. 19). Respondent filed a demurrer to this traverse and plea, which demurrer was sustained and the petition dismissed (R. 119, 120). Petitioner appealed to the Court of Appeals of the District of Columbia, and the latter court affirmed the judgment of the Supreme Court of the District of Columbia, and the decision of the Court of Appeals of the District of Columbia is therefore a final decision (R. 123).

FACTS

(1) From May 28, 1917, to December 29, 1919, petitioner entered into eighteen contracts or supple-

mental contracts with the United States Shipping Board Emergency Fleet Corporation. Five of the principal contracts were for the construction of ships by petitioner for said Fleet Corporation (R. 23, 42, 58, 72, 88); one contract was for the sale by the Fleet Corporation to the petitioner of a shipbuilding plant at Seattle (R. 54); and eight of these contracts were for repairs to vessels, which repairs petitioner agreed to make and for which repairs the Fleet Corporation agreed to pay (R. 112-116). On April 25, 1919, all work on twenty-five ships to be constructed under two of the contracts were cancelled by the Fleet Corporation (R. 119).

Differences arose between the petitioner and the Fleet Corporation growing out of the said several transactions, and on December 28, 1920, petitioner filed with the Auditor for the State and Other Departments a claim against the United States growing out of these contracts. The Auditor, regarding said claim as one against the Fleet Corporation, transmitted it to the Fleet Corporation and took no further action thereon (R. 6).

In the meantime, and on the theory that the contracts under which the claim arose were contracts of the United States, suit had been filed by petitioner in the United States Court of Claims on substantially the same claim presented to the Auditor.

Thereafter (and after it had been determined by this court in the case of the *Sloan Shipyard Corporation vs. United States Shipping Board Emergency Fleet*

Corporation, and allied cases, 258 U. S. 549, that similar contracts were Fleet Corporation contracts and not contracts of the United States) the suit in the Court of Claims was dismissed by petitioner without prejudice, before any action had been taken thereon by that court. (R. 19.)

On May 1, 1923, immediately after the suit was dismissed in the Court of Claims, suit was filed by petitioner in the State Court at Seattle, Washington, against the Fleet Corporation, for $9,129,401.14, exclusive of all credits and counter-claims, the suit being founded on the same contracts between petitioner and the Fleet Corporation that were the basis of the suit in the Court of Claims. This suit was removed by the Fleet Corporation to the United States District Court for the Western District of Washington, and the United States attorney for that District appeared in said cause by direction of the Attorney General of the United States and filed a motion to dismiss on the ground, among others, that the suit was a claim against the United States. That motion is still pending and undisposed of (R. 3).

On April 16, 1923, the Fleet Corporation made an assignment to the United States of

> "all the goods, chattels, bonds secured by mortgages, bonds, notes, shares of stock, contracts, securities, claims, personal property, and choses in action, including accounts against divers persons for the payment of money, and all personal property of every kind and description whatsoever wherever the same may be situated." (R. 4.)

It is alleged in the petition filed by petitioner in the Supreme Court of the District of Columbia, and admitted as true by demurrer, that the United States, by virtue of the said assignment, asserts a claim against petitioner growing out of the contracts hereinbefore referred to, and that the United States, through its attorneys and agents, is now in active preparation to file suit against petitioner on such claim, and that such suit will be filed within the near future (R. 4).

In anticipation of the filing of suit by the United States on said assigned claim, petitioner on September 4, 1924, in order to take advantage of and to comply with the provisions of Section 951 of the United States Revised Statutes (the material parts of which are quoted in the margin)* filed with the respondent a claim against the United States, the claim being based on the same contracts between the Fleet Corporation and petitioner hereinbefore referred to. The respondent refused to act on the claim until after the conclusion of the suit filed by petitioner at Seattle, Washington, against the Fleet Corporation (R. 6), but when the instant case came on for hearing in the Supreme Court of the District of Columbia, the attorney for the respondent stated in open court (as appears from the order of the court overruling the demurrer, R. 18) that the answer filed by the respondent should be con-

*"Section 951. In suits brought by the United States against individuals, no claim for a credit shall be admitted, upon trial, except such as appear to have been presented to the accounting officers of the Treasury, for their examination, and to have been by them disallowed, in whole or in part. * * *."

sidered as a denial of jurisdiction on the part of respondent to consider the claim at all.

When the United States files suit against petitioner on the claim assigned to it by the Fleet Corporation, the suit will be filed in the United States District Court for the Western District of Washington, and the Judge presiding in that court held on February 8, 1924, in the case of *United States* vs. *Fisher Flouring Mills Co.*, 295 Fed. 691, that in a suit brought by the United States on a cause of action assigned to it by the Fleet Corporation, the defendant, by reason of the provisions of Section 951, R. S., could not plead a set-off, credit, or counter-claim, unless it had been first presented to the Accounting Officers of the Treasury and disallowed. (R. 11).

(2) In addition to the foregoing facts, which appear in the record, it was orally stated by counsel for respondent at the hearing in the Court of Appeals and conceded by counsel for petitioner to be a fact, that after the filing of the petition for mandamus in this case the United States actually commenced a suit against petitioner upon these contracts. In said suit the assignment from the Fleet Corporation to the United States is not pleaded, but it is alleged in the complaint that said contracts are United States contracts, and that the claim against petitioner is a direct claim of the United States. This is referred to only for the reason that the decision of the Court of Appeals appears to be based largely upon such statement.

QUESTIONS OF LAW PRESENTED

The foregoing summarized statement of the facts raises five questions of law as follows:

(1) Whether the court can, in a proper case, compel the Comptroller General of the United States to pass upon a claim presented to him?

(2) Whether the Comptroller General of the United States can refuse to pass upon a claim duly presented and thus deprive the defendant in a suit by the United States of the right to prove a set-off or credit to such suit, which right is granted the defendant by Section 951, R. S.

(3) Whether it is too late for the Comptroller General to pass upon such claimed credit after suit has been filed by the United States.

(4) Has the Merchant Marine Act of June 5, 1920, 41 Stat. L. 988, amended Section 951, R. S., so that in a suit by the United States against a defendant arising out of contracts made between such defendant and the Fleet Corporation, such defendant can prove at the trial his credits growing out of the same contracts without showing a presentation thereof to, and action thereon by, the Comptroller General, or has said Merchant Marine Act in any way deprived such a defendant of the right to establish a credit as provided in Section 951, R. S.?

(5) When the United States sues a defendant upon a claim assigned to it, can defendant prove at the trial of such suit credits arising out of the same contracts

upon which the suit is brought without showing a compliance with Section 951, R. S.?

REASONS WHY PETITION SHOULD BE GRANTED

I

The Court of Appeals of the District of Columbia has decided a question of substance relating to the construction of Section 951, R. S., to the effect, that where the United States has already commenced a suit the Comptroller General cannot be ordered to act upon a credit claimed by defendant in such suit for the reason that such order would be an unwarranted interference with the action of the court in which such suit is pending. In making this decision the Court of Appeals of the District of Columbia did not give proper effect to an applicable decision of this court, to-wit, the case of *United States* vs. *Hawkins*, 10 Pet. 125.

II

The Court of Appeals of the District of Columbia has decided a question of general importance which has not been but should be settled by this court of last resort. The effect of the decision of the Court of Appeals is that the Comptroller General cannot be mandamused to act upon a claimed credit to a suit threatened by the United States upon a claim assigned to the United States by the Fleet Corporation, where the claimed credit grows out of the transaction upon which the suit is based. This decision was made notwithstanding the

provisions of Section 951, R. S., which apparently prohibit the allowance of a credit at the trial unless such credit has been presented to the accounting officers of the Treasury and disallowed in whole or in part.

WHEREFORE, your petitioner respectfully prays for the allowance of a writ of certiorari to the Court of Appeals of the District of Columbia, commanding the said court to certify and send to this court a full and complete transcript of the record and all proceedings of the Court of Appeals of the District of Columbia had in this cause, to the end that this cause may be reviewed and determined in this court as provided in the Judicial Code, Section 240; and that your petitioner may have such other or further relief or remedy in the premises as to this court may seem appropriate and in conformity with law, and that the said judgment of the Court of Appeals of the District of Columbia in this case, and every part thereof, may be reversed by this Honorable Court.

LOUIS TITUS,
J. BARRETT CARTER,
Attorneys for Petitioners.

We, the undersigned, attorneys for the petitioner, hereby certify that in our opinion the foregoing petition is meritorious, and well founded in law, and that it is not submitted for the purpose of delay.

LOUIS TITUS,
J. BARRETT CARTER,
Attorneys for Petitioner.

BRIEF IN SUPPORT OF PETITION

POINT I

The right of the court to compel the Comptroller General of the United States, by mandamus, to act in a proper case.

The right of the court to compel the Comptroller General of the United States to proceed to the determination of a claim presented to him, when he arbitrarily refuses to take any action is no longer an open question. This court, in the case of *Work, Sec'y of Int.* vs. *Rives*, decided March 2, 1925, No. 272, has gone quite fully into the powers of the court to compel a public officer by a writ of mandamus to act, and we believe it unnecessary to cite further authorities on this question.

POINT II

Unless the Comptroller General acts on the claim presented, Section 951 of the Revised Statutes may bar petitioner from proving its legitimate credits in the suit which the United States has already commenced as well as in the suit which it threatens to commence.

(1) The record shows that the United States is threatening a suit against the petitioner on claims arising out of the contracts made between petitioner and the Fleet Corporation, which claims were assigned to

the United States by the Fleet Corporation. The oral statements of counsel for both parties at the hearing in the Court of Appeals (referred to in this brief solely because such statements apparently furnished the basis for the decision of the Court of Appeals (R. 124), show that the United States, after the filing of the petition for mandamus by the petitioner in the Supreme Court of the District of Columbia and before the hearing on appeal in the Appellate Court, had actually commenced a suit against the petitioner upon these contracts. Such suit, however, is not based upon the assigned claim but is a direct suit by the United States upon the theory that the contracts are United States contracts, and that the United States can directly maintain a suit thereon.

(2) The right of set-off did not exist at common law, but such right is granted defendant in suits by the United States by Section 951, R. S.

Watkins vs. *United States*, 9 Wall. 759.

The right thus granted extends to all credits or set-offs, whether legal or equitable or whether arising out of the same transaction on which suit is brought or otherwise.

United States vs. *Wilkins*, 6 Wheat. 135.

In so far as it is pertinent to this controversy, Section 951 of the Revised Statutes is as follows:

> "In suits brought by the United States against individuals, no claim for a credit shall be admitted, upon trial, except such as appear to have been

presented to the accounting officers of the Treasury, for their examination, and to have been by them disallowed, in whole or in part, * * *."

Under this statute it is not only necessary for the defendant in a suit against the United States to present a credit to the accounting officer of the Treasury, but such credit must be disallowed in whole or in part before such credit can be admitted upon trial.

United States v. Giles, 9 Cranch 212.
Watkins v. United States, 9 Wall. 759.
United States v. Wilkins, 6 Wheat. 135.
Smythe v. United States, 188 U. S. 156, 173.

(3) Inasmuch as the disallowance of the claim is as much a prerequisite to the admission of the credit as the presentation, it would seem to follow, therefore, that unless Section 951 has been repealed or amended (which will be hereinafter considered), the petitioner will be in danger of being barred from proving its credits in the suit already brought as well as in the suit which is threatened, unless the Comptroller General can be compelled to act upon the claim for credits which has been duly presented to him.

POINT III

Writ of Mandamus compelling Comptroller General to act would be properly granted even after suit has been commenced by the United States, and such writ does not constitute any interference with the court in which such suit is pending.

The Court of Appeals based its decision upon the proposition that to order the Comptroller General to

take action upon the claim presented would be to interfere with the United States District Court at Seattle, where the cases involving the contracts are now pending (R. 124). This would seem to be a misconception of the result of a mandate requiring the Comptroller General to act.

The Writ requested would simply require the Comptroller General to take action upon the claim presented to him. Such writ is not directed to the District Court at Seattle, and it is apparent that it could not interfere with any action that the Seattle Court might choose to take. If the Comptroller General acts, he must either allow or disallow the claim in whole or in part. If he disallows the claim, the Court manifestly would not be interfered with for the whole case would be left to its determination, but in that event, the defendant would have put itself in a position where it would have the opportunity of proving, if it could, the credits which the Comptroller General had disallowed. If, on the other hand, the Comptroller General allowed the claim, such action would not interfere with the Court, for the reason that such action would be merely an admission by the United States, through its properly authorized officer, that the amounts allowed were due. A plaintiff in an action can always admit, if he chooses, that defendant is entitled to certain credits, and such admission does not constitute an interference with the Court before which the case is pending. It is manifest, therefore, that to order the Comptroller General to act would be no interference with the Seattle Court.

In the case of *United States* vs. *Hawkins*, 10 Pet. 125, certain credits in favor of one of the defendants had been offered at the trial. The Attorney General, relying on Section 951, R. S., objected to the consideration of these credits upon the ground (see page 128):

> "It did not appear that the documents to sustain them had been presented to the proper officers of the Treasury before the commencemnt of this suit."

In its decision on this point, this Court said (page 131 of opinion):

> "In regard to so much of the exception which objects to the introduction of the bills, orders or documents claimed as credits in the defendants' supplemental answer—because they had not been presented to the proper Accounting Officers, and disallowed *previous to the commencement of the suit*—we remark, it has never been the practice of the Circuit Court in suits under the law of the 3d March, 1797 (Sec. 951, Rev. Stat.) to deny to defendants a claim for credits against the United States, because they had not been presented and disallowed, before the commencement of the suit. The practice to allow a claim for credits, *after the suit has been commenced*, is sustained by the spirit and letter of the third and fourth sections of the statute.
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> • • • • • •
>
> He (defendant) may have them submitted to a jury, at the trial, if they have been refused by the

Accounting Officers of the Treasury after the suit has been instituted." (Italics ours.)

Here is a direct holding by this Court that the Accounting Officers of the Treasury should pass upon a claim, even if presented after a suit covering the same subject had been filed. It is apparent that the Court of Appeals failed to give proper effect to this decision.

POINT IV

Section 951, R. S., has not been repealed or amended, and Comptroller General is proper official to whom should be presented all claims which are presented as credits to a suit by the United States.

(1) It was contended on behalf of respondent in the lower courts that respondent had no jurisdiction to pass upon the claim presented because the claim grew out of contracts between the Fleet Corporation and petitioner, and that the Act of June 5, 1920 (the Merchant Marine Act, 41 Stat. L. 988-989), gave the Shipping Board exclusive jurisdiction of such claims. The Supreme Court of the District of Columbia apparently based its decision upon this ground (R. 18). The provision of the Act of June 5, 1920, relied upon by respondent, is as follows:

"(c) As soon as practicable after the passage of this Act, the Board shall adjust, settle, and liquidate all matter arising out of or incident to the exercise by or through the President of any of the powers or duties conferred or imposed upon

the President by any such Act or parts of Acts; and for this purpose the board, instead of the President, shall have and exercise any of such powers and duties relating to the determination and payment of just compensation."

For the purpose of this argument we may grant that the above quoted provision from the Merchant Marine Act gives the Shipping Board full authority where it is possible, to adjust, settle and liquidate all claims arising out of Fleet Corporation contracts. But in this case the Board, for some reason undisclosed by the record, has been unable to effect a settlement and has been unable to adjust and liquidate the claim, and the United States has actually commenced or is threatening a suit thereon. Section 2, sub-division (b), Subparagraph (2) of the Merchant Marine Act is as follows:

> "All rights, interests, or remedies accruing or to accrue as a result of any such contract or agreement or of any action taken in pursuance of any such Act or parts of Acts shall be in all respects as valid, and may be exercised and enforced in like manner, subject to the provisions of subdivision (c) of this section, as if this Act had not been passed."

It seems clear, therefore, that there was no intent on the part of Congress to deprive any person who had contracts with the Fleet Corporation of any rights or remedies which such person might have with respect to said contracts. What sub-division (c), previously quoted, really means, therefore, is that the Shipping Board is given the authority to make settlements where

possible, which authority it would not otherwise have had.

(2) It must be remembered that it is Section 951, R. S., that gives a defendant in suits by the United States a right to a set off, and that except for this statute, no such right would exist. It is not to be presumed that Congress, in passing the Merchant Marine Act, intended to deprive a defendant of this right in cases where the United States sued upon Fleet Corporation contracts.

(3) The position of respondent, then, seems to be that the Act of June 5, 1920, amended Section 951, so that in suits by the United States upon Fleet Corporation contracts, a claim for credit must have been presented to and disallowed by the Shipping Board, instead of the Comptroller General, before such credit can be admitted at the trial. To read into the Merchant Marine Act such an amendment to Section 951 is an extraordinary and unwarranted construction of that Act.

It is true that in the case of *United States* vs. *Kimball* 101 U. S. 726, this Court held that a presentation of the claim involved in that case to the Commissioner of Internal Revenue was a compliance with Section 951. The decision of the Court was merely to the effect that where the United States had sued a Collector of Internal Revenue, a presentation of a credit to the Commissioner of Internal Revenue and a rejection by that officer of such credit, was a presentation to and rejection by the "accounting officers of the Treasury."

The Commissioner of Internal Revenue is an officer of the Treasury, and was held in that case to be an accounting officer of the Treasury, but that is far from holding that the Shipping Board, which is an independent establishment of the United States, is an accounting officer of the Treasury.

The Act of June 10, 1921 (42 Stat. L. 23-27), confers upon the Comptroller General "all powers and duties now conferred or imposed by law upon the Comptroller of the Treasury or the six auditors of the Treasury Department," and Section 236 of the Revised Statutes was amended to read as follows:

> "All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned either as debtor or creditor, shall be settled and adjusted in the General Accounting Office."

The same act provides that the General Accounting Office shall be under the control and direction of the Comptroller General of the United States.

It is therefore clear that it is the duty of the Comptroller General, under Section 951, to pass upon the claim which petitioner presented to him.

There is no conflict of jurisdiction between the Comptroller General and the Shipping Board. The Merchant Marine Act gives the Shipping Board the power to make settlements, if it can, of certain controversies. But where a settlement is not made and a suit commenced or threatened by the United States, then the

Comptroller General is the official to whom must be presented all claims for credit in such suit.

POINT V

Section 951 applies where the United States sues on an assigned claim and credits claimed grow out of original transaction.

Counsel for petitioner are firmly of the impression that this court has held that contracts such as those involved in this case between petitioner and the Fleet Corporation are Fleet Corporation contracts and not not contracts of the United States. (See *Sloan Shipwards Corporation* vs. *United States Shipping Board Emergency Fleet Corporation* and allied cases, 258 U. S. 549.) This has been the interpretation placed upon this decision by the Circuit Court of Appeals of the Second Circuit in the case of *Providence Engineering Corp.* vs. *Downey Shipbuilding Corp.*, 294 Fed. 641, by the Circuit Court of Appeals of the Ninth Circuit in the case of *United States* vs. *Matthews*, 282 Fed. 266, and by the Circuit Court of Appeals for the Third Circuit in the case of *United States Shipping Board* vs. *Banque Russo Asiatique*, 286 Fed. 918.

The record shows that whatever claims the Fleet Corporation has against the petitioner on account of these contracts has been assigned to the United States, and that the United States is threatening a suit thereon. The claims for credit which the petitioner has against his threatened suit arise out of the original contracts and transactions, and therefore would be proper

claims for credit in the event the Fleet Corporation itself brought suit, and could be pleaded and proved in such a suit without hindrance.

Under these circumstances, Section 951, R. S., would seem to be applicable. The language of Section 951 is "in suits brought by the United States." This language is broad enough to include all suits. There is no exception made in the case of a suit upon an assigned claim, and it would therefore seem to follow that Section 951 applies where the United States sues upon an assigned claim as well as where it sues upon a direct claim, and it was so held by the United States District Court for the Western District of Washington in the case of *United States* vs. *Fisher Flouring Mills Company*, 295 Fed. 691.

The situation thus presented is that had the Fleet Corporation brought suit against petitioner upon these contracts petitioner could have set up and proved its credits, but the assignment by the Fleet Corporation to the United States and the refusal of the Comptroller General to act places petitioner in a position where it is in grave danger of losing its rights to establish such credits through no fault of its own.

POINT VI

Suit already commenced by the United States is not on assigned claim but on direct claim, and Section 951 is clearly applicable.

If the action is properly brought by the United States directly, without pleading an assignment, then

necessarily the credits growing out of the same contracts are credits against the United States, and the Comptroller General should be compelled to act. This would be in accordance with the decision of the Supreme Court in the case of *United States* vs. *Hawkins*, *supra*, where the then Accounting Officers of the Treasury did act after suit commenced, and such act was approved by the Supreme Court.

It must be apparent, however, that there is a danger that the attorneys for the United States may at any moment change their mind and, as the statute of limitations never runs against the United States, file a new suit, pleading the assignment. In fact, the record in this case shows that such suit is actually threatened (R. 4).

CONCLUSION

Decision of lower court imposes extreme hardship upon petitioner.

The decision of the lower court leaves the petitioner in an extraordinarily awkward position. The United States has commenced suit upon these contracts in the United States District Court at Seattle. The petitioner here, who is the defendant in the Seattle suit, has what it considers to be perfectly legitimate credits in large amounts growing out of the original transaction. The same United States District Court before which the suit against the petitioner is now pending, has held in the case of *United States* vs. *Fisher Flouring Mills Company*, *supra*, that in such a suit by the United

States the defendant cannot be allowed any credits un
less Section 951 be complied with. The appellant ha
done everything it can do to comply with the condition
of Section 951. It first presented its claim to the Audi
tor for State and Other Departments, who at that tim
was the proper accounting officer of the Treasury, an
that officer refused to pass upon the claim. After th
Comptroller General superseded the Accounting Offi
cers of the Treasury, the claim was again presented t
the Comptroller General, and that officer refused t
pass upon the claim.

Section 951 says that no credit can be allowed in sui
by the United States unless such claim has been pre
sented and disallowed by such officer. Consequently
unless this Court grants this petition, there is grav
danger that the Seattle Court may hold petitione
barred, despite its utmost diligence, from proving it
proper claim for credit.

We submit that the United States should not be per
mitted to deprive a defendant of the right given b
statute, to prove a credit, through the refusal of on
of its own officers to act upon a properly presente
claim, and that therefore the writ of certiorari shoul
be granted.

Respectfully submitted,

LOUIS TITUS,
J. BARRETT CARTER,
Attorneys for Petitioner.